



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,880	07/28/2003	Neal L. Eigler	CEDAR.001A	3872

20995 7590 04/05/2010
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

RYCKMAN, MELISSA K

ART UNIT	PAPER NUMBER
----------	--------------

3773

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

04/05/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
efiling@kmob.com
2ros@kmob.com

Office Action Summary	Application No. 10/628,880	Applicant(s) EIGLER ET AL.	
	Examiner MELISSA RYCKMAN	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-31,33,34,78-86,88-91,93-98 and 102-112 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-31,33,34,78-81 and 108 is/are allowed.
- 6) ☒ Claim(s) 82-86,88-91,93-96,102-107,109-112 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/10/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to claims filed 12/15/09.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 82-86, 88-91, 102 and 103 recites the limitation "tissue manipulator " in claims 82-86 (claim 82, lines 11 and 16 and in line 2 of claims 83-86). There is insufficient antecedent basis for this limitation in the claim as there are first and second tissue manipulators.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 82-86, 88-91, 93-96, 104-107 and 109-112 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nobles et al. (U.S. Patent No. 6,117,144) in view of Cribier et al. (US 4,777,951).

Nobles teaches a catheter for performing a procedure on the heart comprising:

- an elongated flexible body (50, Fig. 43B) and a length sufficient to reach the heart (22, Fig. 47) from a femoral vein access

Art Unit: 3773

- a first tissue manipulator (524), a second tissue manipulator (524), and a hinge (Fig. 43C) coupled with the elongated flexible body and with one of the first and second tissue manipulators for pivoting the first or the second tissue manipulator away from the elongate body separately from the other (when in a specific position in the body, one of the arms is prevented from opening, similarly to Fig. 5 in the current application) of the first and second tissue manipulators
- an elongate flexible distal portion (522, Fig. 43D) as and anchor zone
- a fastening material adapted for use in suturing two leaflets of a heart, the fastening material being housing within the distal portion (40 is in the distal portion, Fig. 47)
- the tissue manipulators are moveable between an axial orientation (Fig. 41) for transluminal navigation and an incline orientation for manipulating tissue (Fig. 42)
- wherein the first tissue manipulator (524) comprises a tissue grasper (end of 524) for grasping a heart valve leaflet

Nobles teaches the claimed invention but is silent regarding the length of the distal portion (40) and where it is configured to extend, however Cribier teaches the distal portion is long enough (Fig. 1, distal end) to extend through the mitral valve and into the left ventricular outflow tract, and is at least about 10 cm (Fig. 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the length of the Cribier device with the device of Nobles, as this would better

Art Unit: 3773

anchor the device, which would aid in the correct positioning of the sutures, the device would then be configured to extend into the aorta, right ventricular outflow tract, and pulmonary artery. Moreover, it has been held that changes in size of a component are obvious to one having ordinary skill in the art.

Claims 102 and 103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nobles et al. (U.S. Patent No. 6,117,144) and Cribier et al. (US 4,777,951) as applied to claim 82 above, and further in view of Modesitt et al. (U.S. Patent No. 6,136,010).

Nobles and Cribier teach the claimed invention, but do not specify the first tissue manipulator being longer than the second tissue manipulator, however Modesitt teaches the first tissue manipulator being longer than the second tissue manipulator (Fig. 6C). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first tissue manipulator longer than the second tissue manipulator as shown in Modesitt as this helps to secure the tissue to aid in the correct placement of the sutures.

Allowable Subject Matter

Claims 27-31, 33, 34, 78-81 and 108 are allowed.

Response to Arguments

Art Unit: 3773

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MELISSA RYCKMAN** whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

Art Unit: 3773

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR

/Melissa Ryckman/
Examiner, Art Unit 3773

/Julian W. Woo/
Primary Examiner, Art Unit 3773